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No. 03-326

IN THE

Supreme Court of the United States

RARITAN COMPUTER, INC.,

Petitioner,

v.

AVOCENT REDMOND CORP.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent Avocent Redmond Corp., formerly known as Apex Inc., is a wholly owned subsidiary of Avocent Corporation, a publicly traded corporation.

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REASONS FOR DENYING THE PETITION

Respondent Avocent Redmond Corp. respectfully requests that this Court deny the Petition for Certiorari ("Pet.") filed by Raritan Computer, Inc. The Petitioner identifies no important federal question requiring review nor a conflict between the decision below and established precedent. To the contrary, the decision below follows the precedent of this Court and the Federal Circuit.

Among other things, Petitioner accuses the Federal Circuit of ignoring the patent specification and the prosecution history and arbitrarily assigning dictionary definitions to four of the terms used in Respondent's patent claims. Pet. at 12, 14, 21-22. In construing these four terms, however, the Federal Circuit analyzed the patent specification, the claims, the patent file history, and found that the disputed terms should be assigned their plain and ordinary meaning. *See* Pet. App. A at 15a-19a ("interface circuit"), 20a-21a ("serial data packet"), 22a-23a ("overlay/overlaid"), and 24a-26a ("switch"). Thus, the ruling below does not raise the question presented by the Petition.

Rather, the Petitioner uses the Federal Circuit's ruling as a springboard to request wholesale changes to settled law. Petitioner urges this Court to find that dictionaries cannot be consulted when determining the meaning of a word, *see, e.g.*, Pet. at 8-11, 23-24, and that the public notice function of a patent claim is served only by limiting the claim terms to the inventor's disclosed *preferred* embodiment of the invention. *See, e.g.*, Pet. at 19-22, 24. Neither proposition has merit.

The courts, like school teachers everywhere, have long endorsed the notion that dictionaries are useful to identify the plain and ordinary meaning of words. *See, e.g., Nix v. Hedden*, 149 U.S. 304, 306-07 (1893) (reviewing dictionaries to define a tomato as a vegetable); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 123 S. Ct. 2041, 2047 (2003) (using dictionary to determine "most natural understanding" of words). It is also well settled that it is error to import limitations from the patent specification into the claims. *Continental Paper Bag Co. v. Eastern Paper Bag*, 210 U.S. 405, 419 (1908): *SRI Int'l v. Matsushita Elec. Corp. of America*, 775 F.2d 1107, 1121-22 and n.14 (Fed. Cir. 1985) (*en banc*). Petitioner's proposal would, if adopted, dramatically reduce the traditional protection afforded by a patent, thwart the advancement of the scientific arts, and encourage piracy.

I. THE DECISION BELOW FOLLOWS ESTABLISHED PRECEDENT

The patent "claim" is that "portion of the patent document that defines the scope of the patentee's right." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). This Court has previously instructed that the interpretation of patent claim language is a matter of law for judges to decide. *Id.* In doing so, the Court noted:

> Where technical terms are used, or where the qualities of substances or operations mentioned or any similar data necessary to the comprehension of the language of the patents are unknown to the judge, the testimony of witnesses may be received

> upon these subjects, and *any other means of information* employed.

Markman, 517 U.S. at 388 (citing 2 W. Robinson, *Law of Patents* § 732, pp. 481-83 (1890) (emphasis added). This Court has thus provided the framework for judges to define patent claim terms and to do so by reference to dictionaries, or other reliable means of information.

This Court's decision in *Markman* directs the lower courts to dictionaries where their use will be helpful to ascertain the meaning of patent terms so long as the definition adopted is consistent with the patent document as a whole. This Court itself routinely resorts to relevant dictionaries to determine the ordinary meaning of words in a wide variety of contexts. *See, e.g., Dastar*, 123 S. Ct. at 2047; *Chavez v. Marinez*, 123 S. Ct. 1994, 2001 (2003). That the Court of Appeals for the Federal Circuit — like this Court — would also consult a dictionary to construe the ordinary meaning of a word hardly "turns 100 years of patent jurisprudence on its head." Pet. at 9.

Following this Court's guidance, the Federal Circuit created a claim construction process to ensure that claim terms are interpreted in the context of their use in the patent. In this process, the claims are interpreted in light of the specification and with the knowledge of one of ordinary skill in the art. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). It is proper to start with the language of the claims themselves and to engage in a "strong presumption" that claim terms carry their ordinary meaning as viewed by one of ordinary skill in the art. *Tate Access Floors, Inc. v. Interface Architectural Resources, Inc.*, 279 F.3d 1357, 1370 (Fed. Cir. 2002).

Because the inventor may supply new meanings for terms, the construing court must consult the patent specification and, if in evidence, the prosecution history, to determine if the inventor assigned a new or different meaning to the claim terms. *Markman v. Westview Instruments, Inc.*, 52 F.2d 967, 979-80 (Fed. Cir. 1995) *(en banc)*, *aff'd*, 517 U.S. 370 (1996). If the inventor did not supply her own definition, the plain and ordinary meaning, as understood by those skilled in the art, controls. *Id.* at 980-81. Dictionaries may be consulted to establish a claim term's ordinary meaning, but not to vary or contradict the clear meaning of terms in the claim. *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed. Cir. 2002); *Vitronics*, 90 F.3d at 1584.

The decision below is consistent with, and correctly applies, the very authority the Petitioner accuses the Federal Circuit of ignoring. *See, e.g.*, App. A at 10a-12a, 17a (citing the above cases). Thus, Petitioner's allegation that the decision below is a departure from existing law is devoid of support. Petitioner simply dislikes the application of that law to the facts of this case. That dissatisfaction, however, provides inadequate grounds for review by this Court. *See* Supreme Court Rule 10.

A. The Federal Circuit Selected Definitions That Are Consistent With The Patent's Usage Of The Term

According to Petitioner, the "decision below conflicts with decisions of this Court and other decisions of the Federal Circuit." Pet. at 6. The Petitioner, however, identifies no authority from this Court or from the Federal Circuit that forbids the use of dictionaries in the claim construction process. Instead, even the cases cited by the Petitioner

acknowledge that dictionaries can be used because they reflect the ordinary meaning of words. *Liebscher v. Boothroyd*, 258 F.2d 948, 951 (CCPA 1958); *Vitronics*, 90 F.3d at 1584 n.6. Moreover, the Federal Circuit, like its predecessor court, has long consulted dictionaries while construing claims, including technical claim terms. *See, e.g., Greenberg v. Ethicon Endo-Surgery Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996) (consulting three dictionaries to construe "detent mechanism"); *Quantum Corp. v. Rodime, PLC*, 65 F.3d 1577, 1581 (Fed. Cir. 1995) ("[w]e see no error in the district court's use of dictionary definitions to ascertain the ordinary meaning of relevant claim limitations."); *In re Ripper*, 171 F.2d 297, 298 (CCPA 1948).

In construing a patent term, however, care must be taken to avoid "indiscriminate reliance" on dictionary definitions, *Liebscher*, 258 F.2d at 951, and to ensure that the definition does not contradict the meaning assigned to that term by either the patent specification or the prosecution history. *Vitronics*, 90 F.3d at 1584; *Markman*, 52 F.3d at 981; *Inverness Medical Switzerland GmbH v. Warner Lambert Co.*, 309 F.3d 1372, 1378-79 (Fed. Cir. 2002).[1] By its own language, the decision below demonstrates that care was taken to consider the context in which the words were used in the patent and to ensure that nothing in the prosecution history or patent specification limited or changed the ordinary meaning of those words. *See, e.g.*, App. A at 18a-19a ("interface circuit"), 20a-21a ("serial data packet"), 22a-23a

1. The cases cited by the Petitioner largely involve situations where the patent applicant presented a narrow meaning for a claim term in order to obtain a patent and subsequently argued in favor of a broad meaning for the same term to support an infringement charge. These cases have no application where, as here, the court finds no such prosecution history.

("overlay/overlaid"), and 24a-26a ("switch"). Thus, the Federal Circuit's limited use of dictionaries as interpretive aids is in full accord with established precedent.

1. "Overlay"

Turning first to the term "overlay/overlaid," the Federal Circuit reviewed both the patent specification and the patent file history to determine whether the inventors assigned a special, or limited, meaning to that term. App. A at 22a-23a. Finding no special meaning, the Federal Circuit identified the dictionary definition most appropriate to the display of video images on a computer monitor. In making this decision, the Federal Circuit gave weight to the fact that the patent specification itself describes numerous ways of "overlaying" one video signal over another so as to display both signals on a workstation monitor, including the exact way utilized by the Petitioner's accused products. *See* App. A at 23a (citing support from the patent specification). The accused products display the on-screen menu such that it appears to be placed over the underlying computer video, a combination described in the patent as an "active system video with opaque characters and windows." U.S. Patent No. 5,937,176, col. 12, line 39-col. 13, line 12.

Thus, assuming for the sake of argument, that Petitioner is correct in arguing that claim terms should cover only the preferred embodiment, no error can be assigned to the Federal Circuit's interpretation. The patent specification fully

supports the Federal Circuit's construction for the word "overlay."[2]

2. "Serial Data Packet"

The Petition's treatment of the term "serial data packet" is also problematic. Petitioner complains that the decision below ignores "intrinsic evidence," Pet. at 12, and alleged "PTO factfinding." Pet. at 15. Petitioner, however, is just plain wrong.

The Federal Circuit consulted a dictionary directed to computers and the field of computing, and analyzed the language of the claim, the patent specification, and the prosecution history, before determining that nothing in the intrinsic record requires a departure from the ordinary meaning of the claim term. App. 20a-21a. Petitioner's claim that the Federal Circuit "ignored" the intrinsic evidence is pure fiction.

Indeed, the claim language, the patent specification and the file history all support the Federal Circuit's interpretation. The claim language expressly requires that the serial data packets include the electronic signals produced by the workstation keyboard and mouse.[3] Nothing in that claim

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2. Petitioner proffers numerous alternative dictionary definitions for the term "overlay." Pet. at 22 n.6 & 7. The Petitioner's primary proposed definition, however, relates to loading code into a computer's memory so as to "overwrite," or replace, the code that previously existed. This use of the word "overlay" has no application to the video technology of the present invention. The other five definitions proposed by Petitioner are even less relevant.

3. Claim 1 of the '176 patent uses the word "a" to describe the serial data packet, but, in patent parlance, the word "a" means "one

(Cont'd)

requires that any one data packet include electronic signals from both sources.[4] The patent specification describes how a single serial data packet is created "[a]s the user moves the mouse ***or*** types on the keyboard." '176 patent, col. 3, ln. 43-49 (emphasis added).

The specification further explains that a serial data packet is created when keyboard *or* mouse data is entered by a user:

> The user then selects one or more items from the menu by typing on the keyboard ***or*** moving the mouse. The CPU then interprets these *mouse/ keyboard* inputs as commands that are to be transmitted to the central crosspoint switch.

'176 patent, col. 13, ln. 18-22 (emphasis added). Thus, according to the specification, a *single* serial data packet can be created by inputting keyboard data ***or*** mouse data.

Petitioner bases its construction of "serial data packet" on the specification's use of the phrase "keyboard/mouse packet." Pet. at 13. According to Petitioner, the virgule

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(Cont'd)

or more." *Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1347 (Fed. Cir. 2001). The remainder of claim 1 refers to "the serial data packets" on three occasions. Thus, the claim language establishes that the electronic signals from the keyboard and mouse are used to create more than one data packet.

4. The Petitioner's erroneous statement that the Federal Circuit "acknowledged" that the claim language requires the creation of at least one data packet containing both mouse and keyboard electronic signals, Pet. at 13, is directly contradicted by the Federal Circuit's holding.

(*i.e.*, the slash) between "keyboard" and "mouse" means "and," and therefore a single serial data packet must contain both keyboard *and* mouse data. In addition to violating the rule against reading limitations from the specification into the claims (discussed below), Petitioner's argument violates a basic rule of English punctuation. The virgule is typically used to separate *alternatives*. *See Merriam-Webster's Collegiate Dictionary* (10th Ed. 1997), p. 1540. Thus, the phrase "keyboard/mouse packet" used in the specification means "keyboard packet or mouse packet," and cuts *against* Petitioner's construction.

With respect to Petitioner's second argument, the record makes clear that the Federal Circuit analyzed the Examiner's Statement of Reasons for Allowance of the '176 patent *and* the Petitioner's arguments regarding that statement before finding that:

> [the] reason for allowance merely summarizes the claimed invention and fails to specifically state that patentability is based on the serial data packet including both keyboard and mouse signals.

App. A at 20a. Undeterred, Petitioner insists that *its*, not the Federal Circuit's, *interpretation* of the Examiner's statement should control.[5] Pet. at 15-19. The Federal Circuit considered Petitioner's argument, in detail, and rejected it. App. A at 20a-21a. The Petitioner simply dislikes the Federal

5. The cases cited by Petitioner do not support the "absolutely binding" rule of law advocated. Indeed, the Examiner's statements as to reasons for allowance are not "absolutely" binding. Rather, the cases Petitioner cites and the PTO's new rule, MPEP 1302.14, establish that presumptions or adverse inferences will be made on a "case-by-case basis." *Id.*

Circuit's conclusion as to the legal effect of the Examiner's statement of reasons for allowance.

3. "Switch" and "Interface Circuit"

The Petitioner's arguments regarding the remaining two terms, "switch" and "interface circuit," make clear that Petitioner's real complaint has little to do with the Federal Circuit's use of dictionaries and everything to do with the well-established principle that claim terms usually carry their plain and ordinary meaning. Rather than pointing to any evidence that either term was narrowed or redefined in the specification or during prosecution of the patent, Petitioner argues that the public notice function requires that both terms be limited to the particular switch and interface circuit disclosed in the specification. The Federal Circuit correctly rejected this argument as a "classic attempt to limit the scope of a claim limitation to the preferred embodiment." App. A at 19a; *see also*, Section II, below.

Indeed, the increasingly insincere, litigation-inspired word games played by litigants do much to explain why the lower courts have been forced to consult objective reference materials. The Federal Circuit explained the value of reference materials to the claim construction process:

> Dictionaries, encyclopedias and treatises, publicly available at the time the patent is issued, are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the terms of the claims by those of skill in the art. Such references are unbiased reflections of common understanding not influenced by expert testimony or events

> subsequent to the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation.

Texas Digital, 308 F.3d at 1202-03.

If the prior art allows, patent applicants utilize broad, categorical terms such as "switch" or "interface circuit" to avoid limiting their claim to any one particular embodiment. These broad terms are used in order to maximize the protection afforded by the patent. Petitioner now seeks to penalize the Respondent by limiting the broad claim terms of the present patents to the specific components utilized in the inventors' preferred embodiment. Petitioner supports that request by alleging that "certain of the terms at issue had no definitive meaning for one of skill in the art." Pet. at 21. However, not one witness testified that the disputed terms have no meaning in the art. Rather, both parties' experts testified that the terms "switch" and "interface circuit" apply to numerous structures. This is quite different than suggesting that these claim terms have no meaning.

The Petitioner's arguments demonstrate the very real dangers posed by ignoring the accepted meaning of a word. Without an objective reference point to focus the claim construction analysis, far too many litigants proffer unreasonable "interpretations," and demand far too much of the interpretation process. That is exactly what happened here. To date, Petitioner has yet to concede that *any* of the claim elements of the asserted claims has an ordinary meaning. *See* App. B at 36a-39a (list of "disputed" claim terms). Rather, on one ground or another, Petitioner insists that the claims issued by the Patent and Trademark Office must be re-written so as to limit the asserted claims to the

inventor's preferred embodiment. Otherwise, according to Petitioner, no one can know what kind of "switch," for example, satisfies the claim requirement.

The Petitioner's witnesses, however, agreed that the accused products include a "switch." In fact, all of Petitioner's accused products are marketed and sold as *KVM switches*. Unless a product routes keyboard, cursor control ("mouse") and video signals, it is not called a KVM switch. Word games aside, Petitioner has yet to explain why the accused KVM *switches* are not "switches." And yet, that is exactly Petitioner's argument. The word "switch" means what it says, nothing more, and nothing less.

Nor did the Petitioner's witnesses have any difficulty confirming that the accused products include an "interface circuit" that receives "keyboard and cursor control device signals from the workstation." And yet, this is all the "interface circuit" claim element requires. To avoiding losing on this critical infringement issue, the Petitioner was forced to argue that "fairness" requires that broad claim terms be further limited by the court. That was, and is, the fundamental problem with the Petitioner's approach to claim construction.[6] The only relevant question is whether the term "interface circuit" has an understood meaning to those in the field of

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6. The error of Petitioner's argument is easily illustrated. Were a patent claim to require "a brake for slowing a car," Petitioner would argue that the court must limit the claimed brake to either a drum or a disc before considering whether the disc brake used in the accused product satisfies the claim language. The claim language, however, literally covers both drum and disc brakes. No court-narrowing of the word would be required or appropriate, *unless* the patent specification or the prosecution history demonstrated that the inventor assigned a new, or limited, meaning to the word "brake."

electronics and computers. Accused infringers cannot bootstrap their own professed ignorance of industry terminology into a basis to dispense with the ordinary meaning of a word.

B. Petitioner's Criticisms of The Federal Circuit's Use Of Dictionaries Ring Hollow

Petitioner's criticism of the Federal Circuit's use of more than one dictionary, and dictionaries dated after the patent filing, are without merit. Pet. at 10-11, 14 and 22. Many dictionaries of the English language fail to provide definitions for scientific and technical terms. It is often necessary to resort to specialized, technical dictionaries relevant to the patent's technical field to find a context-appropriate definition. Thus, the Federal Circuit's use of more than one dictionary is a matter of necessity, not evidence of arbitrary action as Petitioner suggests. Indeed, courts routinely consult more than one dictionary to ensure completeness and accuracy. *Eldred v. Ashcroft*, 537 U.S. 186, 199-200 (2003) (consulting several dictionaries to define the word "limited").

Petitioner's complaint regarding the publication dates of the dictionaries consulted fairs no better. Because patent claims are used to provide notice to the public of that which is protected, it is appropriate to refer to dictionaries in use at the time of the patent issues. *Texas Digital*, 308 F.3d at 1202-03. Moreover, the absence of a dictionary definition published before the patent issuance does not mean that the term had no meaning, or a different meaning, prior to that date. Indeed, Petitioner failed to present any evidence that the terms construed had a different meaning at an earlier point in time.

II. The Petitioner Presents No Basis Upon Which To Make Wholesale Changes To The Law

From the outset of this litigation, Petitioner has built its entire non-infringement argument around one simple, but erroneous, assumption — that the claims of a patent, regardless of what they say, should be limited to the inventor's preferred embodiment. Otherwise, according to Petitioner, the public cannot "reliably" separate that which is patented from that which is not.

Congress, however, has already created a different structure. As to the invention *disclosure* requirements, 35 U.S.C. § 112, ¶ 1 provides:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Significantly, the Patent Act does not require that the inventors describe *every* possible embodiment of the invention. *Smith v. Snow*, 294 U.S. 1, 11 (1935); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). As to the invention *claim* requirements, the Patent Act provides that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." 35 U.S.C. § 112, ¶ 2.

With no deference to the existing statutory structure, Petitioner asks this Court to limit patent protection to the disclosed embodiment regardless of what the claims actually say. Congress and the courts have both rejected that approach. 35 U.S.C. § 112; *Continental Paper Bag*, 210 U.S. at 419 (noting that "[t]he claims, not the specification, measure the invention"); *Texas Digital*, 308 F.3d at 1204; *SRI Int'l*, 775 F.2d at 1121-22 & n.14. Such a change would disrupt the settled expectation of thousands of patent owners and result in inequitable windfalls for technology pirates. While Petitioner's proposed changes would undoubtedly benefit those seeking to pirate an invention, it would injure inventors, deter innovation, and harm this country's industrial policy.

Nor is any change needed. It strains credulity to argue, as Petitioner does, that it is unfair to utilize the ordinary meaning of a word because it is "impossible for the public to make informed decisions" regarding claim scope without reading additional limitations into the claims. Pet. at 19, 21. Words plainly have meaning. Those working in the inventor's technological field are presumed to have an understanding of the terms of art in that field. Indeed, the whole patent document is directed to those of skill in the art. 35 U.S.C. § 112, ¶ 1; *Vitronics*, 90 F.3d at 1582. Unless an inventor assigns a new meaning to a claim term, it naturally follows that words should have their ordinary meanings, such as those found in reference dictionaries. *Markman*, 52 F.3d at 979-80. The language of the claim, when given its ordinary meaning, provides the "public notice" Petitioner purports to seek.

In the United States, the claims claim and the specification teaches, not the other way around. The Petitioner presents no justification for its request that wholesale changes be made to the law.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Court deny the Petition.

Respectfully submitted,

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